

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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**Case No. A-6481**

**APPEAL OF TONY D. JACKSON AND TERRY A. JACKSON**

**OPINION OF THE BOARD**

(Hearings held February 10, 2016 and March 2, 2016.  
Effective Date of Opinion: April 14, 2016.)

Case No. A-6481 is an administrative appeal filed November 24, 2015 by Tony D. Jackson and Terry A. Jackson (the "Appellants"). The Appellants charge error on the part of Montgomery County's Department of Permitting Services ("DPS") in the November 6, 2015 denial of a non-conforming use certification, application number 345511, for the property located at 1323 Smith Village Road, Silver Spring (the "Property"). The subject Property is owned by the Appellants.

The Appellants assert that DPS incorrectly denied the application for a non-conforming use at the Property, and assert that a use of the Property that was in place prior to a zoning change that made the use non-conforming should have been permitted to continue. Specifically, the Appellants assert that, pursuant to Chapter 59 of the County Code (the "Zoning Ordinance") the Property has been used continuously for the operation of a commercial trucking business and that a non-conforming use certificate should have been issued for the Property to continue parking heavy commercial vehicles on the Property in conjunction with the trucking business.

Pursuant to section 59-7.6.1.C of the Zoning Ordinance, the Board held a public hearing on February 10, 2016. The hearing was continued for further testimony and the continuation of the hearing was held on March 2, 2016. The Appellants were represented by Alan D. Rothenberg, Esquire. Associate County Attorney Charles L. Frederick represented Montgomery County.

Decision of the Board:      Administrative appeal **DENIED**.

## **FINDINGS OF FACT**

### **The Board finds by a preponderance of the evidence that:**

1. The Property, known as 1323 Smith Village Road in Silver Spring, is an R-90 zoned parcel identified as Parcel P476 of Paint Branch Estates.

2. On September 11, 2015, the Appellants applied to DPS for a non-conforming use for the Property. See Exhibit 7, circle 12-38. On November 6, 2015, DPS informed Appellants that their application for non-conforming use, application number 345511, was denied. See Exhibit 3.

3. On November 24, 2015, Appellants timely filed an appeal, charging error by DPS in its decision to deny application number 345511 for non-conforming use. See Exhibit 1.

4. Ms. LaVerne Durham testified that she lives at 13102 Morningside Lane in Silver Spring, Maryland. She testified that her residence shares a property line with the Property, in that the backyard of the Property borders the side of her residence. Referring to Exhibit 7, circle 16, Ms. Durham identified her residence as the property labeled number 4 in red. She testified that the Property is highlighted in yellow and labeled P476 in Exhibit 7, circle 16. Ms. Durham testified that her home faces Morningside Lane.

Ms. Durham testified that in August of 2015 she made a complaint to Ms. Claudia Canales, Montgomery County Executive Isiah Leggett's secretary, complaining that her neighbor at 1323 Smith Village Lane had a commercial trucking business with five or six commercial vehicles parked on his property, which was in a residential neighborhood. She testified her complaint was forwarded to DPS.

Ms. Durham testified that the five or six commercial vehicles, which were diesel dump trucks, were started around 5:45 a.m. to 6:00 a.m. in the morning so the trucks could warm up. She testified that the employees who would come to drive the trucks would also arrive very early and would park by the side of her home. Ms. Durham testified that the employees spoke loudly and she could hear their music as they approached in their vehicles. Ms. Durham testified she could smell the diesel exhaust fumes from the trucks from her house. She testified that when she travels on Morningside Lane she can smell the diesel exhaust fumes both when the trucks leave around 6:00 a.m. to 7:00 a.m. in the morning and when they return after finishing their assignments at different times, which could be between 1:00 p.m. and 6:00 p.m., depending on when they finished.

Ms. Durham testified that when the trucks returned she could hear them because they make a beeping noise while backing up and she could smell the diesel fumes. She testified she works out of her home and the side of her home that borders the Property is where both her home office and bedroom are located. Ms. Durham testified that the trucks are operated during a normal workweek, Monday through Friday, and that they are

usually maintained or repaired on the weekends. She testified that when the trucks are being maintained or repaired she hears the sounds one would hear at a truck repair shop.

Ms. Durham testified that during snow season different attachments are attached to the trucks and there is a lot of noise making the attachments. She testified that once, when employees were working on the trucks, one employee took a bucket, the contents of which Ms. Durham did not know, and dumped it in the woods on the property line between her property and Appellants property. Ms. Durham testified that in Exhibit 7, circle 20, the bottom photo of trucks is representative of the type of trucks she observes at the Property. She testified that she usually sees the backs of the trucks.

In response to questions from the Board, Ms. Durham testified that there is some but not a lot of distance between her house and where the trucks parked. She testified that there are trees between the trucks and her property but that there is not a fence. Ms. Durham testified that the sheds depicted in Exhibit 7, circle 18 are still on the Property.

Mr. Frederick identified that Exhibit 7, circle 35 is a GIS picture of the Property, taken in the year 1993. The Board noted that the exhibit did not show any trucks on the Property. Mr. Frederick explained that Exhibit 7, circle 31 is the last GIS picture of the Property, which was taken in the year 2011. The Board noted that Ms. Durham's property was labeled 00329763 on Exhibit 7, circle 31, and that her house seemed to be close to the property line.

Ms. Durham testified that the employees park their cars very close to the property line between her property and the Appellants' property. She testified they park right next to a shipping container/shed. In response to questions from the Board, Ms. Durham testified that the employees park behind the trucks via a driveway, close to the trees on the property line. Referring to Exhibit 7, circle 20, Ms. Durham testified that the driveway is on the side of the green truck in the bottom photograph.

Ms. Durham testified that her property is labeled "Lot 8, Block 9 Paint Branch Estates" on Exhibit 14. She testified that the employees park between what is labeled as "frame shed" and "269.71" on Exhibit 14, and marked the area in red. Ms. Durham testified that the trucks are located behind the frame shed, and marked the area in blue. See Exhibit 14.

Ms. Durham testified that her family purchased the home at 13102 Morningside Lane in 1972 when she was in elementary school and that she grew up in the home. She testified that she does not recall any diesel dump trucks parked at the Property in 1972, and that the trucks arrived around the year 2000. Ms. Durham testified that in the last four to five years, the number of trucks on the Property has increased from one or two to four, five, or six. She expressed to the Board that she is very concerned about having the trucks so close to her property due to air pollution, noise pollution, and health issues from inhaling diesel exhaust fumes. Ms. Durham also testified that having the trucks in the neighborhood diminishes the character of the neighborhood. She testified the presence of the trucks has diminished her quality of life; she can smell the fumes and

hear the trucks even without opening her windows and is unable to enjoy her backyard and patio.

In response to questions from the Board, Ms. Durham testified that she works as a marketing consultant but does not see clients at her home. She testified she is the only person residing in her home. She reiterated that she first noticed the trucks in the early 2000s, around 2004 or 2005. Ms. Durham testified that she first complained to the County 311 call system about the trucks in February 2012, then she made another complaint online with DPS and the Department of the Environment ("DEP") in October 2014, and then this final complaint she made in August 2015. She testified that she made her first complaint because she was being awoken at 5:30 a.m. or 6:00 a.m. with noise from the trucks and the employees and smelling diesel fumes.

In response to further questions from the Board, Ms. Durham testified that she first noticed the trucks being repaired on the property when they first arrived in around 2004. She testified that the prior two complaints she filed with 311 and online were assigned to a DPS inspector, who came out and observed the trucks. Ms. Durham testified that the inspectors in those instances informed her they were in touch with Appellants and their attorney, who told the inspector Appellants had a non-conforming use certificate for the trucks; therefore, the cases were closed. She testified she has never witnessed any safety concerns with the trucks but she does not live on Smith Village Road where the trucks travel.

On cross-examination by Mr. Rothenberg, Ms. Durham testified that the trucks leave around 7:00 a.m. and the first one may return around 1:00 p.m., with the remainder of the trucks returning in a staggered fashion around 3:00 p.m. and 4:00 p.m. She testified that the trucks are not located right on the property line. Ms. Durham testified that she requested Appellant Tony Jackson turn the trucks so that they do not face her home, but that she is still subjected to noise and fumes from the trucks. She testified that she also asked Appellant Tony Jackson to have his employees not park near her home but that he did not comply with her request.

On re-direct by Mr. Frederick, Ms. Durham testified that the photographs introduced as Exhibit 15, circle a through d, were taken from her property in the summer of 2014. She testified that Exhibit 15, circle a-b are photographs she took of the trucks from her bedroom window on the second floor of her home. She testified that Exhibit 15, circle c-d, are photographs she took standing outside by the side of her home of the Appellants' employees vehicles: one truck, one SUV, and several cars.

In response to questions from the Board, Ms. Durham testified that the trucks and the employee vehicles have not been parked on the Property since December 2015. Mr. Frederick clarified that the trucks were moved in response to the Notice of Violation ("NOV") DPS issued to Appellants on August 12, 2015. See Exhibit 7, circle 10.

Ms. Durham testified that since the trucks have been removed from the Property her neighborhood has been quiet, like it was in the 1970s.

On re-cross from Mr. Rothenberg, Ms. Durham testified that she knows the vehicles depicted in Exhibit 15 belong to Appellants' employees because she sees the employees entering and exiting their cars. She testified that she was not sure whether the gray Suburban in Exhibit 15, circle d, belonged to the Appellants.

5. Mr. Mark Moran testified that he is employed by DPS in the Division of Zoning and Site Plan Enforcement and that he has been employed with the County for 29 years. He testified that in his position as an investigator he responds to complaints related to land use issues and zoning, conducts investigations, and takes the appropriate enforcement actions when necessary. Mr. Moran testified that he frequently consults the Zoning Ordinance in the course of his employment.

Mr. Moran testified that Exhibit 7, circle 6-9 are DPS' computer database, the Hansen system, documents for Ms. Durham's August 2015 complaint about commercial vehicles at the Property. He testified that the Property is zoned R-90. Mr. Moran testified that he also received a call from Montgomery County Community Police Officer Sharif Hidayat requesting Mr. Moran accompany the officer to the Property. Mr. Moran testified Officer Hidayat had received complaints through the County Executive's office about the Property. He testified that on August 12, 2015 at approximately 10:00 a.m., he and Officer Hidayat visited the Property; at that time, Mr. Moran posted the NOV because no one was home at the Property. See Exhibit 7, circle 10.

Mr. Moran testified that the zoning violation for which he issued the NOV was parking more than one light commercial vehicle on residentially zoned property. He testified that, pursuant to the Zoning Ordinance, section 59-6.2.5.L.4, in a R-90 zone, "[o]ne light commercial vehicle and one recreational vehicle may be parked on any lot or parcel in the...R-90...zone." Mr. Moran testified that "light commercial vehicle" is defined in the Zoning Ordinance, section 59-1.4.2.

In response to questions from the Board, Mr. Moran testified that while he did not observe any commercial vehicles parked on the Property on August 12, 2015, he had investigated the issue a year prior for another complaint and observed four commercial vehicles on the Property at that time. See Exhibit 7, circle 8. He testified that he issued the August 12, 2015 NOV based on Officer Hidayat's observation of five commercial vehicles on the Property the day prior.

Mr. Moran testified that the vehicles depicted in Exhibit 7, circle 20 were heavy commercial vehicles, not light commercial vehicles. He testified that parking any one of the commercial vehicles depicted in Exhibit 7, circle 20 would violate the Zoning Ordinance, section 59-6.2.5.L.4.

Mr. Moran testified that after he issued the NOV to the Appellants, he received a call from Appellant Tony Jackson. Mr. Moran testified that Appellant Tony Jackson told him at that time that Appellants had a valid non-conforming use for the Property, number 202923. Mr. Moran testified that he investigated the matter and determined the non-

conforming use certificate number 202923 was for a different property located at 1237 East Randolph Road. He testified that he checked DPS records and found a non-conforming use was never issued for the Property.

Mr. Moran testified that previous investigations into the use of commercial vehicles at the Property had concluded that there was a non-conforming use certificate for the Property. He testified that the notes for a prior investigation, wherein the investigator has since retired, indicate that the Appellants told the investigator that the address changed from 1237 East Randolph Road to the Property at 1323 Smith Village Road. Mr. Moran testified that he closed a prior complaint in October 2014 because he accepted the results of prior investigations that there was a non-conforming use certificate for the Property.

Mr. Moran testified that upon receipt of the October 2015 complaint he conducted a more in-depth investigation and thoroughly reviewed all records relating to both 1237 East Randolph Road and the Property. Mr. Moran testified his investigation found no connection between the two properties with regard to the approved non-conforming use. He testified that he then sent Appellants a letter, dated August 14, 2015, explaining the non-conforming use for East Randolph Road did not apply to the Property on Smith Village Road and that Appellants could submit a new application for a non-conforming use for the Property. See Exhibit 7, circle 11.

Mr. Moran testified that Appellants submitted an application for a non-conforming use on the Property on September 11, 2015. See Exhibit 7, circle 13-25. He testified that he did not make the decision to deny the application but that he recommended that the application be denied because there was insufficient evidence to show a non-conforming use. Mr. Moran testified that heavy commercial vehicles were not permitted to be parked on the Property once the Zoning Ordinance was enacted, and that the Zoning Ordinance was enacted in 1928.

On cross-examination by Mr. Rothenberg, Mr. Moran testified that Appellants had faxed him a plat Appellants claimed showed the Property was one large parcel owned by the Jacksons, which he placed in the notes of his investigation. See Exhibit 7, circle 8. He testified that Appellants were mistaken about the application of the non-conforming use at 1237 East Randolph Road to the Property.

On re-direct by Mr. Frederick, Mr. Moran testified that in response to a complaint about the commercial trucks at the Property in March 2008, Appellants' attorney informed the investigator that the Property had a new address, and that the old address was 1237 East Randolph Road. See Exhibit 7, circle 47. He testified that in response to another complaint in January 2009, the investigator was again told the property address at 1237 East Randolph Road had changed. See Exhibit 7, circle 49. He testified that 1323 Smith Village Road and 1237 East Randolph Road are not the same property. Mr. Moran further testified that in response to a complaint in August 2009, one of Appellants' family members informed the investigator Appellants had only been operating the trucking business since 2000. See Exhibit 7, circle 41.

In response to questions from the Board, Mr. Moran testified that he considers the dismissal of earlier complaints about heavy commercial trucks on the Property to be a mistake by DPS. He testified that the address of 1237 East Randolph Road no longer exists but that it was located on the other side of Randolph Road from the Property. Mr. Frederick explained that, on Exhibit 16, 1237 East Randolph Road would be where the words "Icey and Richard Jackson" appear on the exhibit and the Property is located on the opposite side of East Randolph Road, north and to the left.

Mr. Frederick introduced a 2002 GIS aerial photograph of the area. See Exhibit 17. He explained that Randolph Road is located at the bottom of Exhibit 17 and to its left is Jackson Trucking business where trucks are lined up, which is 1237 East Randolph Road. Mr. Frederick further explained that on Exhibit 17 there is a line for Smith Village Road. In response to a Board question, Mr. Rothenberg explained that what is referred to as Beltsville Road on Exhibit 7, circle 30 is now Randolph Road.

On re-cross by Mr. Frederick, Mr. Moran testified that he is not aware of a trucking company currently operating at what used to be 1237 East Randolph Road.

6. Mr. Mark Beall testified that he is the Manager of Zoning for DPS and that he has been employed with the County since 2001. He testified that Exhibit 7, circle 30 is the recorded plat for a section of Paint Branch Estates and that that property was subdivided on June 3, 1965. Mr. Beall testified that when a property is subdivided, the developer who develops the property will go to Park and Planning and will go through a review process with all the different agencies. He testified that the developer will go through the Preliminary Plan process to create a subdivision, which entails approval through a hearing before the Planning Board and receipt of a certified Preliminary Plan or Site Plan. At the conclusion of that process, the developer records the subdivision through a recorded plat such as Exhibit 7, circle 30.

Reviewing Exhibit 7, circle 30, Mr. Beall testified that the portion of the parcel labeled "E. Jackson Liber 618 Folio 81" is now 1323 Smith Village Road. Comparing Exhibit 7, circle 30 with Exhibit 16, Mr. Beall testified that Exhibit 16 reflects that Exhibit 7, circle 30 has now been re-subdivided.

Mr. Beall testified that he retrieved Exhibit 7, circle 31-38 at the request of Mr. Frederick. He testified that the exhibits depict a progression of time, circle 38 being taken in 1951, circle 37 in 1970, circle 36 in 1979, circle 35 in 1993, circle 34 in 2004, circle 33 in 2006, circle 32 in 2008, and circle 31 in 2011. He testified Exhibit 7, circle 31-34 are from the DPS internal GIS system. Mr. Beall testified that Exhibit 7, circle 35-38 are in the County's DTS GIS system and that he had GIS personnel print them out larger and date them.

In response to Board questions, Mr. Beall testified that the southern portion of Paint Branch Estates was subdivided in 1965. He testified that Smith Village Road was subdivided at a different time. He testified that Exhibit 7, circle 16 shows that 1323 Smith Village Road was subdivided in 2008, and that the two lots marked in red as one and two

on the exhibit were created at that time. Mr. Beall testified that the remainder of the parcel is 1323 Smith Village Road.

Mr. Beall circled the Property (1323 Smith Village Road) in red and 1237 East Randolph Road in blue on aerial photographs: Exhibit 18-A, taken in 1951; Exhibit 18-B, taken in 1970; Exhibit 18-C, taken in 1979; and Exhibit 18-D, taken in 1993. Mr. Beall testified that Exhibit 18-D does not show any activity, such as parking pads or land disturbances for parking of commercial vehicles, at the Property. He testified that Exhibit 18-D shows lots of cars, some dump trucks, land disturbing activities, and piles of dirt at 1237 East Randolph Road.

Comparing Exhibit 18-D, taken in 1993, with Exhibit 18-A, taken in 1951, Mr. Beall testified that in Exhibit 18-A there appears to be some land disturbance activity at 1237 East Randolph Road but that the Property (1323 Smith Village Road) is mainly trees. He testified that in Exhibit 18-B there also appeared to be land disturbing activities at 1237 East Randolph Road and that the Property at 1323 Smith Village Road is overgrown and looks like it is trees and a grassy area. Mr. Beall testified that in Exhibit 18-C there are still land disturbing activities at 1237 East Randolph Road and that some rectangles are depicted that could be trucks. He testified that the Property is completely full of trees and overgrown. See Exhibit 18-C.

Mr. Beall circled the Property in red and 1237 East Randolph Road in blue on Exhibit 18-E, taken in 1998. He testified that the Randolph Road property showed trucks sitting on the property while the Property is clear with grass in the backyard and no land disturbance activity. Mr. Beall testified that at that time, in 1998, it was not permitted to park dump trucks in a R-90 zone.

Mr. Beall circled the Property in red and 1237 East Randolph Road in blue on Exhibit 17, an aerial photograph taken in 2002. He testified that the Randolph Road property had five dump trucks behind the houses and that the Property is still a grassy area with no real land disturbance activity and no trucks in the backyard. See Exhibit 17.

The County introduced Exhibit 19-A through 19-D, aerial photographs taken in 2004 (19-A), 2006 (19-B), 2008 (19-C), and 2011 (19-D). Mr. Beall circled the Property in red and 1237 East Randolph Road in blue on Exhibit 19-A through 19-D. He testified that in 2004 there is some land disturbance activity at the Property and a truck parked in the back corner and that 1237 East Randolph Road appears to be a gravel area with no trucks and no land disturbance activity. See Exhibit 19A. Mr. Beall testified that in 2006 the Property has a little more land disturbing activities with one or two trucks and a container and that the East Randolph Road property is a gravel area. See Exhibit 19B.

Mr. Beall further testified that in 2008 there are four or five rectangles on the Property that appear to be dump trucks and the East Randolph property is still gravel. See Exhibit 19C. He testified that the photographs were taken during the day. See Exhibit 19C. Mr. Beall testified that in 2011 the rear of the Property has land disturbing activities and four or five dump trucks while 1237 East Randolph Road is a clear gravel



grassy area. See Exhibit 19D. He testified that over the course of years from 2002 to present the vehicles appear to be transferring from 1237 East Randolph Road to the Property.

7. Mr. Peter Myo Khin testified that he resides at 13107 Lime Tree Road, Silver Spring, Maryland, and that he is able to observe the Property from his home and from driving through the neighborhood. Mr. Myo Khin testified he purchased his property in 1998 and that at that time there were no dump trucks or large commercial vehicles being parked at the Property at 1323 Smith Village Road. Mr. Myo Khin testified that he submitted a letter to the Board. See Exhibit 10.

On cross-examination by Mr. Rothenberg, Mr. Myo Kim testified that there are trees between his property and the Property but that they do not obstruct his view of the Property at any time of year. He testified that most of the trees are mature trees and the canopy has risen up; therefore, he is able to observe the Property despite the presence of the trees. He testified that he walks in the morning and can hear the trucks and smell the fumes from the trucks. He testified that he travels down Smith Village Road because he knows some of the neighbors that live on that road.

On further cross-examination by Mr. Rothenberg, Mr. Myo Kim testified that he has never observed Appellants' dump trucks coming or going while loaded with a commodity. He testified that there is no access from Smith Village Road to Tyler Page Elementary School but that children walk in the neighborhood on their way to school. Mr. Myo Kim testified that he has never seen trucks leaving the Property and heading on the route toward the elementary school but that most of the neighborhood does not have sidewalks so the children have to walk in the streets.

On additional cross-examination by Mr. Rothenberg, Mr. Myo Kim testified that he has three grandchildren who live with him and attend Tyler Page Elementary School. He testified that his grandchildren walk to school up Tamarack Way and that there is no bus service to the elementary school.

On re-direct by Mr. Frederick, Mr. Myo Kim testified children that live on Smith Village Road do not go to Tyler Page Elementary School; they go to Cannon Elementary School.

On re-cross by Mr. Rothenberg, Mr. Myo Kim testified that he is not aware of any incidents with Appellants' trucks and any of the neighborhood children.

8. Mr. Greg Nichols testified that he has been employed with DPS for about 13 years in the Division of Zoning and Site Plan Enforcement as the manager of the Site Plan Enforcement Section. He testified that he has been employed by other jurisdictions as well and has been working in the industry for over 30 years. Mr. Nichols testified that he supervises Mr. Moran.

Mr. Nichols testified that he became aware that Ms. Durham had been complaining about the trucks at the Property so he spoke with her about her complaint. He testified that her complaint concerned parking heavy commercial vehicles at the Property, which is prohibited under the Zoning Ordinance, section 59-6.2.5.L.4. Mr. Nichols testified that non-conforming use certificates follow a property, not a business, and that there is not a non-conforming use certificate for the Property.

Mr. Nichols testified that there was a non-conforming use certificate for a trucking business at 1237 East Randolph Road, certificate number 202923. He testified that Richard J. Jackson and Ikey A. Jackson filled out the application for that non-conforming use certificate, and that the trade name of the company operating under that certificate was Jackson Trucking. See Exhibit 7, circle 51.

Mr. Nichols testified that he received an application for a non-conforming use certificate for the Property. See Exhibit 7, circle 13-25. He testified he denied the application. Mr. Nichols testified that the application was for Jackson Trucking, as well as for Jackson Hauling, Old Dad Trucking, and T. Jackson Trucking, LLC. See Exhibit 7, circle 13. He testified that the application for a non-conforming use at the Property was made by the same family as the non-conforming use application previously granted for 1237 East Randolph Road.

Mr. Nichols testified that he denied the application for a non-conforming use at the Property because the use (parking of heavy commercial trucks) had to be permitted before the Zoning Ordinance was enacted. He testified that this use also had to be continuous without any break of six months or more. Mr. Nichols testified that upon review of the application and the aerial photographs previously presented in the County's case, he couldn't substantiate the fact that the trucking business had operated at the Property for more than about 15 years.

Mr. Nichols testified that he only spoke with Ms. Durham at the start of his investigation. He testified that Ms. Durham and Mr. Myo Khin's testimony that there were not commercial trucks on the Property as far back as 1972 supports what he had already determined in his investigation. He testified that Appellants' application included affidavits but not business records. See Exhibit 7, circle 21-25.

On cross-examination by Mr. Rothenberg, Mr. Nichols testified that he does not know how many members of the Jackson family operate a trucking business and that he did not talk to Mr. Myo Khin prior to making his decision to deny Appellants' application. Mr. Nichols testified that his decision was based on the fact that he couldn't find physical proof and evidence of a trucking business at the Property during the requisite time.

Mr. Nichols testified that the aerial photographs submitted by the County at Exhibits 17 through 19 show current existing conditions at 1237 East Randolph Road and 1323 Smith Village Road on the particular date and at the particular time that the photographs were taken. He testified that the photographs were taken during the daytime

but that you can still see trucks in the photographs at the 1237 East Randolph Road property, and that the trucks are evidence of a business operating at this property.

Mr. Nichols testified that he was not involved in granting the non-conforming use certificate to 1237 East Randolph Road and does not know what information was used to grant the certificate. He testified the physical package of that application is similar to Appellants' application.

On re-direct by Mr. Frederick, Mr. Nichols testified that the photographs in Exhibit 17 through Exhibit 19 show a change in the physical characteristics of the Property beginning around 2000 to 2002. He testified the exhibits show that the business was expanding at that time period.

In response to questions from the Board, Mr. Nichols testified that when Mr. Rothenberg questioned why the non-conforming use certificate had been denied he responded to Mr. Rothenberg via email. See Exhibit 7, circle 29. He testified that he did have a follow-up telephone conversation about the denial with Mr. Rothenberg. Mr. Nichols testified that he did not feel the Appellants' application met the burden of proof to show that a business had been established at the Property prior to the enactment of the Zoning Ordinance in 1928, which outlawed parking heavy commercial vehicles on the Property, or that such a business operated for an ongoing period without a six-month hiatus. He testified he did not feel that a more detailed explanation for the denial was necessary. Mr. Nichols testified that he did not respond to a second email correspondence from Mr. Rothenberg because they conversed by telephone.

In response to further questions from the Board, Mr. Nichols testified that he was not able to corroborate Mr. Vernon Jackson's affidavit that he parked trucks on the Property continuously. See Exhibit 7, circle 25. Mr. Nichols testified that even if a business could be established at the Property dating back to the 1920s, in order to obtain a non-conforming use the business is not allowed to expand. He testified he had evidence to show the business was 12 or 15 years old, not 80 years old.

On re-direct by Mr. Frederick, Mr. Nichols testified that he indicated at the bottom of Appellants' application that the application was disapproved because there was "insufficient evidence to substantiate a nonconforming use." See Exhibit 7, circle 14.

9. Mr. Daniel Wilhelm testified that he lives at 904 Cannon Road in Colesville, which is across the street from Cannon Road Elementary School. He testified that he resides on the other side of East Randolph Road and that he can't see the Property from his home; the Property is at least a mile away from his home. Mr. Wilhelm testified that his hearing is not good but that he can't hear the trucks or smell the fumes.

10. The Board declined to accept as an exhibit Mr. Rothenberg's email to Mr. Nichols to show that Mr. Rothenberg sent Mr. Nichols a follow-up email and Mr. Nichols did not respond to the email. Mr. Nichols had conceded that he followed up with Mr. Rothenberg by telephone and did not respond to a second email from Mr. Rothenberg.

11. Mr. Tony Jackson testified that he applied for a non-conforming use permit for the Property at 1323 Smith Village Road. He testified that his family is comprised of former slaves who worked to obtain ownership of the Property once they were freed. Mr. Tony Jackson testified that the Smith, Johnson, and Jackson families are all involved and have all inter-married.

Mr. Tony Jackson testified that his family has owned the property from the right upper side of Exhibit 17 down Smith Village Road and across East Randolph Road to the left side of Exhibit 17. He testified that the other side of East Randolph Road was owned by his grandfather, Mr. Benjamin Jackson, who sold it to his son, Mr. Richard Jackson. Mr. Tony Jackson testified that Richard Jackson was his uncle.

Mr. Tony Jackson testified that he never told DPS that 1237 East Randolph Road was moved to 1323 Smith Village Road. He testified that he told DPS that 1237 East Randolph Road was moved from one side of the road to the other side of the road. He testified that the Property faces East Randolph Road and that his mailbox at the Property was originally on East Randolph Road.

Mr. Jackson testified that his family originally owned the entire parcel of land but that they had to sell off some of the land. He testified that the land was used for a sawmill operation and for hauling wood, sand, and gravel. Mr. Tony Jackson testified that this use began in the 1920s under Mr. Benjamin Jackson, his grandfather, and Mr. Eugene Jackson, Mr. Benjamin Jackson's brother. He testified that the hauling began with horses and wagons and later was done by old model T Ford trucks.

Mr. Tony Jackson testified that Exhibit 11, circle 16 is a photograph taken on the Property that he obtained from a family member. He testified that the photograph depicts his grandfather on a wagon, the Reverend Harland on a horse, and Mr. Eugene Jackson in the front of the photograph.

Mr. Jackson testified that Exhibit 28 is a photograph of his grandfather's model T Ford truck. He testified that he found the photograph in a photo album and that the truck was used in the family business. Mr. Jackson testified that Exhibit 7, circle 24 is a photograph of his truck, and his barn can be seen in the back of the photograph. He testified that this photograph was taken in 2002. See Exhibit 7, circle 24.

Mr. Tony Jackson testified that his grandfather, Mr. Benjamin Jackson, hauled wood, sand, and gravel, as well as vegetables to the Old Street Market. He testified that his family donated the land for the Smith Field School in 1927. Mr. Tony Jackson testified that Exhibit 7, circle 23 contains information about the Smith Field School. He testified that the school is where African American children went to school and that his grandfather delivered wood to the school to heat it. He testified that his grandfather originally delivered the wood by horse and wagon, then by the model T Ford.

Mr. Tony Jackson testified that the family business is called T. Jackson Hauling, T. Jackson, and Old Dad Trucking. He testified that trucks were parked both at 1237 East Randolph Road and at the Property at 1323 Smith Village Road. He testified that many family members have been involved in the operation and ownership of the business, including his father, Mr. Idaway Jackson, who operated the business for 30 years, and himself. Mr. Tony Jackson testified he has been operating the business for 31 years. He testified that Mr. Harold Jackson Sr. and Mr. Harold Jackson Jr. have also been involved in operation of the business.

Mr. Tony Jackson testified that his grandfather, Mr. Benjamin Jackson, began parking trucks at the Property (1323 Smith Village Road) when he started the business. He testified that Mr. Harold Jackson Sr. and Mr. Harold Jackson Jr. had many types of trucks and that they were all commercial vehicles. He testified that at least six trucks have continuously been on the Property: his father, Mr. Idaway Jackson, had two to three trucks; Mr. Harold Jackson Sr. had four trucks; and Mr. Harold Jackson Jr. had one truck. Mr. Tony Jackson testified that the trucks have been there continuously and that more and more trucks have been added over the years. He testified the trucks have been parking at the Property at 1323 Smith Village Road since 1927.

Mr. Tony Jackson testified that Exhibit 29 portrays Mr. Ernest Jackson's truck on the Property. He testified he does not know the date the photograph was taken. See Exhibit 29. Mr. Tony Jackson testified that Exhibit 30 portrays Mr. Stanley Jackson's truck on the Property, and that he obtained the photograph from his father's photo album. He testified that Exhibit 31 is a Jackson family truck and that his house is depicted in the back of the photograph. Mr. Tony Jackson testified that the truck is parked on the Property and that the photograph was taken in the early 1960s. See Exhibit 31.

Mr. Tony Jackson testified that Exhibit 32 is photographs of his trucks taken on the Property. He testified that the motor was taken out of one of the trucks. See Exhibit 32. Mr. Tony Jackson testified that truck was parked on the Property for three months because the engine was being fixed. See Exhibit 32. He testified Exhibit 32 was taken in 2002.

Mr. Tony Jackson testified that Exhibit 33 is a Jackson truck and that he can tell by the oak tree in the photograph that the photograph was taken on the Property. He testified that he moved into the Property in 1984 and that the family parked trucks on the Property prior to that time. Mr. Tony Jackson testified that Exhibit 34 is a photograph of a truck on the Property and that he can tell it is his property by the swing depicted in the picture. He testified Exhibit 34 was taken in the early 1930s.

Mr. Tony Jackson testified that Exhibit 35 is a photograph of a truck that one of his relatives sold to him. He testified that he does not know when the photograph was taken but that the truck's year is 1973. See Exhibit 35. He testified that the truck was parked on the Property in 1984 when he bought the truck.

Mr. Tony Jackson testified that the Property is referred to by the family as "the Home Place" and that it contains the oldest house in the neighborhood. He testified that he visited the Property before he bought it and that there were two to three trucks on the Property when he visited it.

Mr. Tony Jackson testified that his family business also parked trucks at the 1237 East Randolph Road location and that Mr. Richard Jackson had obtained a non-conforming use certificate to park the trucks at that location. See Exhibit 11, circle 21. He testified that that non-conforming use application was supported by affidavits and photographs, and that his application was also supported by affidavits and photographs. Mr. Tony Jackson testified that his family sold some of their land for tax reasons.

Mr. Tony Jackson testified that Mr. Wilhelm does not live near the Property. See Exhibit 8. He testified that the trucks are not loaded when they leave the neighborhood. Mr. Tony Jackson testified that the trucks return at 4:00 p.m. and that school is let out between 2:30 p.m. and 3:00 p.m. He testified that there have not been any incidents involving children and the trucks.

Mr. Tony Jackson testified that he has considered building a fence or some sort of buffer around the Property. He testified that the proposed buffer would be ten feet high. Mr. Tony Jackson testified that he is also considering planting around 20 trees on the Property. He testified he told his employees not to park by Ms. Durham's house the day after Ms. Durham complained about his employees parking near her house, and that his employees now park in the front of the Property, away from Ms. Durham's house.

Mr. Tony Jackson testified that the SUV shown in Exhibit 15c and 15d belongs to his wife, Ms. Terry Jackson. He testified that the SUV was parked there for one to two months because it was not running, but that now the SUV has been removed. He testified that the white vehicle shown in Exhibit 15c and 15d was an employee's vehicle that was not running, but that it too has now been removed. Mr. Tony Jackson testified that he also had his employees turn their vehicles around in response to Ms. Durham's complaint.

Mr. Tony Jackson testified that he plows Smith Village Road free of charge during snow storms. He testified that he would be unable to do so if the trucks were not on the Property.

On cross-examination by Mr. Frederick, Mr. Tony Jackson testified that the owners of the vehicles depicted in Exhibit 15 still had access to the vehicles when they were not running. Mr. Tony Jackson testified that the Jackson, Johnson, and Smith families owned a large portion of the property depicted in Exhibit 17, and that the Property (1323 Smith Village Road) is circled in red on Exhibit 17. He testified that Smithville Colored School is located to the left of Randolph Road and that his grandfather, Mr. Benjamin Jackson, was the only one who took wood to the school. See Exhibit 17.

Mr. Tony Jackson testified that he was born in 1962 and that the Smithville Colored School closed in 1952. He testified that all of his knowledge about the school is based on his family's representations to him.

Mr. Tony Jackson testified that his family bought all of the property in the 1870s and at that time they farmed the property. He testified that his family farmed the property until they began to sell some of the land off, but he is not sure when this occurred. He testified that when the property was subdivided and houses were built the property was no longer farmed. Mr. Tony Jackson testified that Exhibit 11, circle 16 is a photograph of a wagon that took produce to the Old Street Market, which was part of the family's farming activities.

Mr. Tony Jackson testified that the Jackson family took goods to the market by horse and wagon and also engaged in farming and hauling. He testified that his grandfather hauled wood, sand, and gravel. Mr. Tony Jackson testified that Mr. Benjamin Jackson and Mr. Eugene Jackson purchased a model T Ford in 1921 and used and parked the truck on both properties (1237 East Randolph Road and 1323 Smith Village Road). He testified that his family first purchased a commercial dump truck in the 1930s or 1940s, when they started the trucking business.

Mr. Tony Jackson testified that the original non-conforming use application submitted in 2000 for the 1237 East Randolph Road property was denied. He testified that his relatives then produced additional affidavits and historical information and the non-conforming use certificate was granted. Mr. Tony Jackson testified that certificate was granted for Jackson Trucking. See Exhibit 7, circle 51.

Mr. Tony Jackson testified that the application at issue here is not for 1237 East Randolph Road; it is for a different property. Mr. Tony Jackson testified that he was not sure whether the Randolph Road property had closed down when he applied for this non-conforming use certificate for 1323 Smith Village Road. He testified that Jackson Trucking parks trucks at both properties and both properties are the main business location.

Mr. Tony Jackson testified that he bought the family business and moved to the Property in 2002. He testified that the house on the Property was built in 1941. Mr. Tony Jackson testified that when DPS began coming to the Property due to complaints, he told DPS that he had a non-conforming use permit. He testified that when he received the NOV, he spoke to Mr. Moran, and that was when he learned that the nonconforming use had to be for the property, not for the business.

Mr. Tony Jackson clarified that when he refers to "the Home Place" he is referring to the entire family area and that when he refers to "My Place" he is referring to his specific lot, the Property. He testified that his family members had told him trucks have been parking at the Property since the 1920s. Mr. Tony Jackson testified that his grandfather had divided up "the Home Place" and gave each of his grandsons a portion of the land. He testified that the house on the Property was the building on "the Home Place."

Mr. Tony Jackson testified that Exhibit 35 is a photograph of a truck which looks like it is on the Property, but he was not sure. He testified the house in Exhibit 31 is his cousin Mr. Harold Jackson's house, and that Harold owns the truck depicted in the exhibit. Mr. Tony Jackson testified that Exhibit 32 depicts the trucks parked at the Property in 2002.

On re-direct by Mr. Rothenberg, Mr. Tony Jackson testified that early on in the Jackson family business they hauled sand and gravel using dump trucks in the 1920s. He testified that the business first used large trucks in the 1940s. Mr. Tony Jackson testified that his cousin, Mr. Scott Jackson, used to own the lot next to his but had sold it the previous year. He testified that there was never a house on Mr. Scott Jackson's property and that there were trucks on Mr. Scott Jackson's property before it was sold.

On re-cross by Mr. Frederick, Mr. Tony Jackson testified that the trucks are currently parked at his cousin's house in Spencerville, Maryland.

12. Mr. Vernon Jackson testified that he lives two doors down from Mr. Tony Jackson, who is his second cousin. He testified that his father, Mr. Eugene Jackson, started the family hauling business.

Mr. Vernon Jackson testified that he attended the Smithville Colored School and that his uncle delivered wood to the school. He testified that trucks, including his wood truck, were parked at the Property. He testified that he grew up at the Property and that trucks were always parked at the Property.

On cross-examination by Mr. Frederick, Mr. Vernon Jackson testified that he was born on February 28, 1942. He testified that he sold the Property to Mr. Tony Jackson and that he lived on the Property until 1967. Mr. Vernon Jackson testified the business obtained the wood truck in the 1960s. He testified that before that time there was no wood truck parked on the Property. Mr. Vernon Jackson testified that his brother, Mr. Harold Jackson, was 11 years older than he was and that Harold was born in 1931. He testified that Mr. Harold Jackson was the one who started driving the trucks.

Mr. Vernon Jackson testified that his brother, Mr. Harold Jackson, parked his trucks on an empty lot. See Exhibit 17. He testified that the wood truck was parked at a house with a brown roof two houses down from the Property.

13. Ms. Terry Jackson testified that she is a bus driver for Montgomery County Public Schools. She testified that she met Mr. Tony Jackson in 1983 and that he started the business in 1984. Ms. Jackson testified that she married Mr. Tony Jackson in 1990.

Ms. Jackson testified that she had visited "the Home Place" and that there were three trucks there before she and Mr. Tony Jackson were married in 1990. She testified that they now have six trucks on the Property.



Ms. Jackson testified that she has a commercial driver's license and that she moves trucks around the Property. She testified that she drives an SUV to fit her 14 grandchildren and that when the SUV is not working it is parked in the back lot of the Property.

14. On rebuttal by Mr. Frederick, Mr. Beall testified that he had reviewed the State Department of Assessment and Taxation ("SDAT") records for the Property and that the principal structure on the Property was built in 1945.

Mr. Beall testified that on Exhibit 37, which was compiled by GIS in the DPS office, the property labeled 00264360 is the Property (1323 Smith Village Road) and the property labeled 00264358 is 1327 Smith Village Road, which is a vacant lot without a house previously owned by Mr. Scott Jackson. He testified that Exhibit 37a, taken in 2004, shows a dump truck and a structure close to the property line on 1327 Smith Village Road but no trucks on the Property (1323 Smith Village Road). Mr. Beall testified that there was land disturbing activity on Scott Jackson's property but not on Appellants' property at this time.

Mr. Beall testified that Exhibit 37b, taken in 2006, shows some land disturbing activity on the bottom of the Property. He testified that Exhibit 37c, taken in 2008, shows a couple of dump trucks on the Property, as well as some gravel. He testified that there was an expansion in use on the Property in 2008.

Mr. Beall testified that Exhibit 37d, taken in 2011, shows that there are four commercial trucks on the Property and no trucks on Mr. Scott Jackson's property next door. He testified that the parking area had increased at the Property in 2011 and there is less green grass. See Exhibit 37d. Mr. Beall further testified that there was a new driveway cutting through the front to the back of the Property in 2011. See Exhibit 37d.

15. Mr. Tony Jackson testified that he built the driveway on the Property after Mr. Scott Jackson sold the property next door because he could no longer use Mr. Scott Jackson's driveway.

### **CONCLUSIONS OF LAW**

1. Section 2-112 of the Montgomery County Code provides the Board of Appeals with appellate jurisdiction over appeals taken under specified sections and chapters of the Montgomery County Code.

2. Section 2A-2(d) of the Montgomery County Code provides that the provisions in Chapter 2A govern appeals and petitions charging error in the grant or denial of any permit or license or from any order of any department or agency of the County government, exclusive of variances and special exceptions, appealable to the County Board of Appeals, as set forth in section 2-112, article V, chapter 2, as amended, or the Montgomery County Zoning Ordinance or any other law, ordinance or regulation providing for an appeal to said board from an adverse governmental action.

3. Section 59-7.6.1.C.1.a of the Zoning Ordinance provides that any person, board, association, corporation, or official allegedly aggrieved by the grant or refusal of a building or use-and-occupancy permit or by any other administrative decision based or claimed to be based, in whole or in part, upon this Chapter, may file an appeal with the Board of Appeals.

4. Section 59-7.6.1.C.3 of the Zoning Ordinance provides that any appeal to the Board from an action taken by a department of the County government is to be considered *de novo*. The burden in this case is therefore upon the County to show that Non-conforming Use Application number 345511 was properly denied.

5. Section 2-42B(a)(2)(A) of the County Code makes DPS responsible for “administering, interpreting, and enforcing the zoning law and other land use laws and regulations.”

6. Section 59-1.4.2 of the Zoning Ordinance defines the following words and phrases:

*Commercial Vehicle, Heavy:* Any motor vehicle, tandem axle trailer, or semi-trailer used for carrying freight or merchandise, or used in any commercial enterprise that is:

1. greater than 10,000 pounds gross vehicle weight;
2. rated by the manufacturer with a load capacity of more than one ton;
3. 21 feet long or longer, measured from the extremes of the vehicle, including any object on the vehicle; or
4. more than 8 feet high, with properly inflated tires, measured from the ground to the highest part of the vehicle, including any racks but excluding any antennas.

A heavy commercial vehicle does not include a recreational vehicle, a motor vehicle owned or operated by the County or other government agency, a machine or a vehicle for agricultural use, or a tow truck that is less than 10,000 pounds gross vehicle weight, shorter than 21 feet in length as measured under subsection 3, and less than 8 feet high as measured under subsection 4.

*Commercial Vehicle, Light:* Any motor vehicle or trailer used for carrying freight or merchandise, or used in the promotion of any commercial enterprise that is not a heavy commercial vehicle and not used as an office or containing an entry for transactions. A light commercial vehicle is not a recreational vehicle, a motor vehicle owned or operated by the County or other government agency, or a machine or vehicle for agricultural use.

*Nonconforming Use:* A use that was lawful when established, that no longer conforms to the requirements of the zone in which it is located.

7. Section 59-6.2.5.L.4 of the Zoning Ordinance, “Commercial Vehicle Parking for Properties with a Residential Use,” reads as follows:

**Sec. 59-6.2.5.L.4. Commercial Vehicle Parking for Properties with a Residential Use:**

\* \* \* \* \*

**4. R-200, R-90, R-60, and R-40 Zones**

One light commercial vehicle and one recreational vehicle may be parked on any lot or parcel in the R-200, R-90, R-60, or R-40 zone; however, the recreational vehicle may only be used for dwelling purposes for up to 3 days in any month.

\* \* \* \* \*

8. Section 59-7.7.2 of the Zoning Ordinance, pertaining to a lawful nonconforming use, reads as follows:

**Sec. 59-7.7.2. Nonconforming Use:**

A lawful nonconforming use may be continued under the following limits:

**A. Expansion**

A lawful nonconforming use of a structure or lot must not be expanded.

**B. Abandonment of Use**

Except for a Registered Living Unit allowed under the code in effect on October 29, 2014, which may be abandoned, removed, or terminated under the code in effect on October 29, 2014, a nonconforming use or a use deemed to be conforming under Section 7.7.1.A.2 is abandoned if it ceases for at least 6 consecutive months. If a nonconforming use or a use deemed to be conforming under Section 7.7.1.A.2 is abandoned, it must not be reestablished unless it is a historic resource and satisfies Section 7.7.2.C.

**C. Historic Resources**

Any nonconforming use that has ceased operations for at least 6 consecutive months may be reestablished if the use is:

1. located in a historic structure or on a historic site identified in the Master Plan for Historic Preservation; and
2. consistent with the historic use of the property as documented in the Locational Atlas of Historic Sites, the Master Plan for Historic Preservation, or the land records.

**D. Lawful Nonconforming Use Certification**

The owner of property who wishes to establish that a use on the property is lawfully nonconforming, under the provision of this Chapter, must submit an application in a form provided by DPS. A nonconforming use certification must be issued by DPS if DPS determines that the use of the property is a nonconforming use as defined herein.

9. The Board finds, based on the testimony of Ms. Durham, Mr. Moran, Mr. Beall, Mr. Myo Khin, Mr. Nichols, Mr. Wilhelm, Mr. Tony Jackson, Mr. Vernon Jackson, and Ms. Jackson, and the evidence of record, that the application for non-conforming use did not satisfy the requirements of the Zoning Ordinance, section 59-7.7.2, as follows:

Appellants submitted an "application for non-conforming use" with DPS on September 11, 2015, as required by section 59-7.7.2.D. See Exhibit 7, circle 13-25. DPS conducted a review of the "application for non-conforming use" and found that the application did not conform to the requirements for a non-conforming use, as defined in the Zoning Ordinance, sections 59-1.4.2 and 59-7.7.2. See Exhibit 7, circle 14 and 26. Therefore, on November 6, 2015, DPS denied the application for non-conforming use number 345511. See Exhibit 7, circle 14 and 26.

10. The Board finds that, per the Maryland Court of Appeals, "nonconforming uses are not favored by Maryland law, and local ordinances regulating validly non-conforming uses will be construed to effectuate their purpose." *Cnty. Council of Prince George's Cnty. v. Zimmer Dev. Co.*, 444 Md. 490, 514 n. 16 (2015). The Board further recognizes that one of the main tests for determining the existence of a non-conforming use is whether the property is "known in the neighborhood as being employed for a given purpose." *Chayt v. Bd. of Zoning Appeals of Baltimore City*, 177 Md. 426, 434 (1939). Further, even when a party presents largely uncontested evidence of a non-conforming use, the Board must evaluate the credibility of testimony and the weight of evidence before making its decision. *Cnty. Comm'r's of Carroll Cnty. v. Uhler*, 78 Md.App. 140, 146 (1989). The determination of whether an owner's use is an impermissible enlargement or a mere intensification is a question of fact for the Board to determine. *Phillips v. Zoning Comm'r of Howard Cnty.*, 225 Md. 102, 109 (1961).


11. The Board finds, based on the testimony of Ms. Durham, Mr. Moran, Mr. Tony Jackson, and Ms. Jackson, that the Appellants have had five or six heavy commercial vehicles parked on the Property, zoned R-90. Under the Zoning Ordinance, section 59.6.2.5.L.4, only one light commercial vehicle may be parked on the Property. The Board also finds that the parking of commercial vehicles on the subject Property has been illegal since the enactment of the County's first Zoning Ordinance in 1928. The Board finds, based on the testimony of Ms. Durham, Mr. Moran, Mr. Beall, Mr. Myo Kim, and Mr. Nichols, that the Property did not have commercial vehicles parked on the Property in 1928. The Board also finds that any non-conforming use that Appellants allege existed on the Property in 1928 with their hauling business has been expanded to the use of five or six commercial trucks, and thus does not meet the requirements of Section 59-7.7.2.A of the Zoning Ordinance. The Board further finds that the parking of any commercial vehicles on the Property has not been done in a continuous manner and thus the use would be abandoned under Section 59-7.7.2.B of the Zoning Ordinance. The Board finds, based on the testimony of Mr. Moran, Mr. Beall, and Mr. Nichols, that the application and supporting documentation submitted in connection with the non-conforming use application number 345511 did not conform to the requirements of the Zoning Ordinance.

12. Based on the foregoing, the Board finds that DPS has met its burden of demonstrating by a preponderance of the evidence that non-conforming use application number 345511 was properly denied, and that the appeal should be denied.

The appeal in Case A-6481 is **DENIED**.

On a motion by Vice Chair John H. Pentecost, seconded by Member Edwin S. Rosado, with Chair Carolyn J. Shawaker and Member Bruce Goldensohn in agreement, and with Member Stanley B. Boyd necessarily absent, the Board voted 4 to 0 to deny the appeal and adopt the following Resolution:

**BE IT RESOLVED** by the Board of Appeals for Montgomery County, Maryland that the opinion stated above be adopted as the Resolution required by law as its decision on the above entitled petition.

  
Carolyn J. Shawaker  
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 14<sup>th</sup> day of April, 2016.

  
Barbara Jay  
Executive Director

**NOTE:**

Any request for rehearing or reconsideration must be filed within ten (10) days after the date the Opinion is mailed and entered in the Opinion Book (see Section 2A-10(f) of the County Code).

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure (see Section 2-114 of the County Code).

